This tide of federal enactments did not go without protest. One writer, for example, noted that "the rising tide of regulation has become a major barrier to productive economic activity (Weidenbaum 1979, p. 6). Regulations were costly because they required enormous administrative processes involving paperwork, communications, inspections, and recordkeeping. Many of these costs were incurred by both the regulated (and ultimately their customers) and the regulators (and ultimately the taxpayer). Regulatory requirements caused changes in company procedures that were blamed for loss of productivity, adverse effects on employment, and a dampening of innovation. The dissenters to the regulatory surge were not opposed to all government intervention, but only to its excesses. They cautioned that if passing a law is considered the only way to handle every problem that emerges, we will encounter a condition deemed by another writer as "hyperlexis" -- a pathological condition caused by an overactive law-making gland, and a degree of legal pollution greater than the atmosphere can carry (Manning 1977).

Legislation also emerged at state and local levels of government. Many local communities adopted some version of a "Green River" law, so named because the first of these laws was passed in Green River, Wyoming, and survived its initial legal challenge there by the Fuller Brush Company in 1933 (Brittenham et al. 1969). These laws prohibited salespeople from selling door to door unless they were invited to do so by local residents. Intended originally to protect local citizens from high-pressure and unethical tactics of itinerant salespeople, the laws also helped insulate local merchants from outside competition. Numerous subsequent legal challenges caused many of these ordinances to be abandoned or modified in intent from prohibitive to regulatory, typically requiring the door-to-door seller to obtain a local license and pay a required fee.

The Uniform Commercial Code, its origins tracing back to the depression of the 1930s, was adopted in some form in all states except Louisiana by 1969. A key aspect of this code, detailed in Article 2, involves warranties, both express and implied, in buyer-seller transactions. Statements of fact or promise that form the basis of the purchase decision become express warranties, while statements of subjective value, opinion, vague superlatives, or general praise are deemed as "puffing" and do not create a warranty (Nordstrom 1970; Vaccaro 1987). An implied warranty always exists that the merchandise is fit for its intended purpose, especially if the buyer clearly demonstrates reliance on the seller to provide merchandise suitable for the buyer's specific need. Many states adopted a variety of other regulations involving unfair or deceptive sales and advertising practices. In fact, by late 1969, 28 states had adopted laws generally similar to the FTC Act (Wagner 1971).

Of particular interest at the state level were the "cooling-off" laws. These provided consumers with a period of time during which they could rescind a contract to purchase goods or services if the sale was made at some location other than the seller's place of business. Aimed largely at direct sellers, cooling-off laws were adopted in some form in 15 states by mid-1969 (Walker and Ford 1970). The cooling-off period varied from state to state. A one-business-day period was selected in Georgia, Massachusetts, Vermont, and Washington. Two business days was the standard in Indiana, New Jersey, and Pennsylvania. Three business days was most popular, prevailing in the laws of Connecticut, Hawaii, Illinois, Maine, Oklahoma, Rhode Island, and Vermont. Four days was the period selected by New Hampshire. These cooling-off statutes were the precursors of federal cooling-off regulations that were to be promulgated by the FTC in the early 1970s, as discussed more in Part Three.

Regulatory Activities

The Antitrust Division of the Justice Department and the Federal Trade Commission share the enforcement responsibilities of the major regulatory legislation -- the Sherman Act, the Clayton Act, the Federal Trade Commission (FTC) Act, and their amendments. The FTC Act created the Federal Trade Commission, whose major responsibility was to enforce section 5 of the Act which prohibits "unfair methods of competition and unfair or deceptive acts or practices in commerce," The Sherman Act fell primarily under the aegis of the Antitrust Division, and both agencies are concerned with the Clayton Act depending on the circumstances of the case (Wagner 1971). It is the Federal Trade Commission (FTC), however, which is the key regulatory player in events impacting the direct selling industry, both before and after 1970.

The FTC Act produced a broad and general mandate to maintain competition and fairness in business relationships. To achieve this mandate, the FTC must first decide what conduct is unlawful. It does this through investigations and hearings, followed when appropriate by the issuance of a complaint, a cease-and-desist order, an industry guide, or a trade regulation rule. It also offers advisory opinions to businesses and trade associations on the legality of proposed actions such as a promotional program or a set of product standards. The power of the FTC is underscored by the fact that it plays all three roles of investigator, prosecutor, and judge. Its decisions can be appealed to the courts, but its orders will be sustained if they are supported by substantial evidence.

In its early years, the FTC focused primarily on business actions that affected other businesses -- the preservation of competition. Its focus broadened, however, in the mid-1950s to more actively and systematically reflect the views of consumers regarding issues of fair play in the marketplace. A particularly cogent episode in direct selling involved the Holland Furnace company, a major FTC pursuit between 1954 and 1965. Holland was the nation's leading furnace-replacement firm with 5,000 employees and 500 offices nationwide. Its sales approach was characterized as "tear and scare" whereby a salesman posing as a safety inspector would dismantle the furnace, condemn it as hazardous, and refuse to reassemble it. In one instance when a customer became suspicious, she called an inspector from the local gas company who pronounced the furnace perfectly safe and in good repair. A local Better Business representative with a hidden tape recorder was present when the salesman returned and captured the salesman's pitch:

> ... the flue pipe instead of taking all of the smoke and fumes up the flue, a good percentage of them are going up in the house. . . . See where she's burnt out over there . . . that's going right up into your house. . . . The warm air plenum is above here, which

> means that the smoke and fumes go up in here, and then that fan turns on back there. . . . I'm not saying this to scare you, I'm just saying it to impress you. . . . This is worse than the raw gas, because the raw gas you can smell. This is carbon monoxide. . . . This is no different than if you took the exhaust pipe from your automobile and ran it in here. . . . I would actually be doing you a favor . . . by shutting your furnace off. . . . I'm not doing that to sell you a furnace, I'm just trying to be honest with you. . . . It's not healthy. I would replace it and I would do it now. . . . It's leaking. . . . We can allow you $28.50 as junk for that old furnace (Magnuson and Carper 1968, p. 23).

In one case, the Holland Furnace Company sold nine furnaces consecutively in six years to one woman in her seventies. The FTC requested that Holland stop these practices in 1954, but it produced no change. In 1958 the FTC issued a cease-and-desist order. The company appealed but the court upheld the FTC order. Still the company did not comply, so in 1962 the FTC filed a petition to cite the company for criminal contempt of court. In 1965 the court sentenced the company president to a six-month jail term, fined the company $100,000, and fined two former sales managers $500 each. The Supreme Court refused to consider the company's appeal of the monetary fines, and affirmed the conviction of the firm's president in 1966. When he went to jail, the company declared bankruptcy and the deceptive practices were terminated (Magnuson and Carper 1968; Wagner 1971).

By the end of the 1950s the consumer movement was building steam. In December 1959 the FTC held its first Conference on Public Deception with Commission Chairman Earl Kintner presiding. Among the topics on the agenda were direct selling practices, as well as fictitious pricing and bait advertising (Wagner 1971). Subsequently the FTC held numerous conferences in various cities and several state attorneys general called similar conferences to facilitate the exchange of views between their law enforcement agencies and consumer groups.

Paul Rand Dixon became FTC Chairman in 1961. His intention was to make the FTC the servant of the legitimate business community as well as the servant of the consumer. He favored industry guidance, voluntary compliance, and self-regulation over legal action. Many years earlier, in 1938, an FTC official had testified in Congressional hearings that in most of the Commission's cases involving restraint of trade such as price fixing, a trade association was the prime mover (Wagner 1971). In fact, prior to 1969 the FTC had found in more than 200 cases that trade associations were the culprits in eliminating competition. Thus it was somewhat a surprise in 1967 that the Dixon FTC issued an advisory opinion sanctioning a Code of Ethics proposed by the Paid-During-Service Magazine Subscription industry to govern the practices of its member independent sales agencies and their salespeople. This action was subsequently recognized as a precedent for the Direct Selling Association, though the opinion was not held unanimously within the FTC. Commissioner Philip Elman offered a dissenting view that would challenge any upcoming attempts at developing similar codes. Elman stated:

> With the best of intentions, a trade association has proposed, and the Commission now approves, the establishment of a Code which provides for the exercise of the powers of government by a private group.
>
> It is one thing to encourage businessmen to promote voluntary compliance with the law. It is something else to approve a private scheme of law enforcement, where investigations are conducted by private "policemen" and where violations of privately-decreed "laws" are punished by fines and penalties imposed by private "judges" after privately-conducted "trials" (Advisory Opinion No. 128, June 1, 1967, as quoted in Krum and Greenhill 1972, p. 383).

In March 1968 the Consumer Subcommittee of the Senate Committee on Commerce was holding hearings on a proposed Senate bill dealing with door-to-door sales regulation ("Door-to-Door Sales Regulation" 1968). The bill, introduced by Senator Magnuson, called for a cooling-off period whereby a buyer from a door-to-door salesman can rescind a contract of $25 or more by notifying the seller within 24 hours of the agreement. In discussing his bill, Magnuson stated, "The unethical door-to-door seller preys upon the elderly, the poor, the ignorant. The most common variety is the one-shot hit-and-run salesman. He does not hesitate to play on sympathy, shame, or the buyer's conscience." Michael Pertschuk, then a subcommittee aide but destined to be FTC Chairman, added, "With a $25 minimum we're obviously not after the Fuller Brush Man or the Avon Lady. What we'd like to check is the dishonest seller of refrigerators, frozen food lockers, home improvements, and especially encyclopedias" ("Congress Probes Door-to-Door Selling" 1967).

The Magnuson bill was favorably reported out of the committee but was never acted upon by the Senate. Opposition to the bill was voiced by many, prominent among them being Lloyd E. Deilke, president of the National Association of Direct Selling Companies (NADSC), the predecessor organization of DSA. Deilke argued that his association's members, who were carefully screened and "absolutely legitimate," would suffer an unfair hardship from this bill because "the public gets the impression that all door-to-door selling is shady." He agreed, however, that "We'd be as happy as anyone to see the shyster outfits out of business" ("Congress Probes Door-to-Door Selling" 1967). Others representing direct sellers were also actively opposed to a cooling-off period for door-to-door sales at either the federal or state level, arguing that it singled out their industry in a discriminatory manner because it did not apply to in-store selling (Sher 1968).

In late 1968 the FTC held a nine-day series of hearings on consumer issues, with the goals of identifying the most pressing problems, determining what programs already existed to deal with these problems, identifying gaps in those existing programs, and formulating ways of strengthening the FTC's own programs or creating corrective actions to redress the problems (Jones 1988). Again, Lloyd Deilke of NADSC appeared as spokesperson for the direct selling industry to argue against a federal "cooling-off" remedy. Instead, he presented a draft of a consumer protection act that was intended as a model for state legislation ("Direct Selling Group Proposes ...." 1968). The NADSC proposal would give consumers an unlimited right to contract cancellation and refund if any of 16 prohibited sales practices have been used. These prohibited sales practices were specifically named and described, and included bait-and-switch, false guarantees, and failure to fully disclose prices. The model act also called for enforcement by court action if necessary.

Deilke was one of 60 witnesses heard by the FTC over a nine-day period. Some suggested that consumers should be represented in government regulatory bodies that deal with their problems. Others called for more emphasis on self-regulation, for greater cooperation between business and government, and for the FTC to underwrite an independent research study to document the true state of consumer attitudes and problems. But a number of witnesses argued for more laws with stronger deterrents and penalties regarding deceptive sales practices.

Hearings on various consumer protection and direct selling issues continued in a number of agencies and committees through 1969. During this period, FTC Commissioner Philip Elman took the opportunity to call for criminal penalties in cases of consumer fraud, to "make the punishment fit the crime." Elman's statement of reasoning was particularly explicit: "The thief who burglarizes a home, and the door-to-door salesman who steals a family's savings and security by trickery and pretense, should both be treated as criminals" (quoted in Hasin 1987, p. 5).

Also in 1969 the FTC issued its first cooling-off order. Household Sewing Machine Company, a door-to-door seller, was directed to give customers a three-day period during which they may rescind their purchase contract. The company was engaged in bait and switch, initially presenting old and rusty machines to customers even though new machines at reduced prices were advertised. The salesperson then tried to switch the prospect to a new and much more expensive model. The cooling-off remedy was deemed appropriate because, in the words of one of the Commissioners, "the most effective protection is that which the consumer can provide for herself by taking a second look at the product to consider whether she can really afford it, to discuss the purchase with her husband -- all free from the influence of deceptive sales techniques" ("FTC Finds It Can Order ...." 1969).

In spite of these and other actions, the philosophy of the Dixon-led Commission provoked strong criticism among consumerists and others wishing for a more aggressive and proactive prosecutorial stance. In early 1969, a group of law student investigators affiliated with Ralph Nader (known as "Nader's Raiders") issued a 185-page scathing critique demanding a comprehensive overhaul of the FTC, the resignation of the Chairman, and greater use of the Commission's legal authority (Wagner 1971). Four months after the release of the Nader report, President Nixon requested the American Bar Association (ABA) to appoint a study group to examine the FTC. The ABA report, issued five months later, more politely but clearly endorsed the major points of the Nader report, and recommended that the FTC shift its main emphasis from reliance on voluntary procedures toward detection and eradication of frauds against the consumer.

Shortly after the ABA report was issued, President Nixon appointed Caspar Weinberger as

FTC Chairman with the charge to revitalize the Commission. Weinberger was active in focusing on consumer protection and proposing regulatory legislation on warranties and other areas. He remained only five months, however, being selected by Nixon to become the head of the new Office of Management and Budget. His successor was Miles Kirkpatrick, who had headed the ABA study group that examined the FTC.

This in summary form completes the pageant of the FTC up to 1970 -- the unfolding of the regulatory environment faced by the Direct Selling Association prior to adopting their ethics code. Clearly, there were ominous signs for the direct selling industry, portending possible major constraints on their operations and perhaps threatening the life of the industry altogether.

Views About Ethics and Self-Regulation

Public Opinion. Consumerism fostered legislative and regulatory activity focusing on deceptive and dishonest practices of business, though many critics and reporters of these practices acknowledged that the dishonest practices came from a small proportion of the business population. Regardless of the proportion involved, however, those practices were perceived as quite pervasive (as Table 1 has already demonstrated). Perhaps this result occurred because the press was (and still is) far more likely to report the deceptive and dishonest scenarios than the routine honest and ethical behavior, thus making the negative appear to far outweigh the positive in business activities. Or perhaps the negative did outweigh the positive.

In any case, the public's view of business during the 1960s was not laudatory. In a 2,000-interview survey by Louis Harris and Associates in 1966, 42 per cent felt that "most businessmen will do anything, honest or not, for a buck," and 77 per cent characterized business as a "dog-eat-dog proposition" ("What Americans Really Think ..." 1966). Two years later, the Gallup Poll questioned a cross-section of Americans about the state of honesty and the state of morals in the U.S. Regarding honesty, 61 per cent felt that "life is getting worse in terms of honesty," and 78 per cent felt that "life is getting worse in terms of morals" (*Gallup Opinion Index* 1968). While the Gallup results were not specifically related to business practices, they represent a general anxiety that certainly includes business relationships as well as other aspects of life.

Business Views of Ethics. Since this study concerns the development of a code of ethics by business executives, it is fitting to examine the views of businesspeople concerning ethics in their own activities. In 1968, Raymond Baumhart wrote a book covering this topic, based on a large survey research study of business executives in the 1960s (Baumhart 1968). After briefly describing some of the major unethical escapades of business during the preceding decade, such as the price-fixing conspiracy among twenty-nine electrical manufacturers, Baumhart observed:

> The scandals, Congressional investigations, and antitrust prosecutions of the last

> decade have revealed widespread confusion about ethics in business. This confusion extends to both what *is* being done by businessmen and what *should* be done. There have been substantial differences of opinion about the applicability of traditional ethical standards to current business practices. There has also been disagreement about the extent of the responsibility of educational and religious institutions for the business behavior of their graduates or members. These differences demonstrate the need for serious thought and discussion about business ethics (Baumhart 1968, p. 3).

Baumhart surveyed more than 1,700 business managers and executives (all men) from across the U.S. in order to gather information as the basis for the "serious thought and discussion" he proposed. His questions about what "ethical" means to the survey respondents elicited many shades of answer. Some representative statements included these:

> "What society considers to be fair and honest."
>
> "What is honest in my own mind."
>
> "That which best serves my interests without hurting others."
>
> "What my feelings tell me is right."

Other predominant findings included the belief by most participants that they were more ethical than others in business. and that it is difficult to live by ethical standards because of the pressures of competition. The majority felt there were unethical practices in business, and one way favored to deal with them was a written code of ethical practices. The development of an industry code of ethics was favored by 71 percent of study participants. But these same respondents were skeptical of the effectiveness of such codes; 57 per cent agreed that people would violate the code whenever they thought they could avoid detection, and only 9 per cent felt that an ethics code would be easy to enforce. By posing the questions in these surveys, eliciting the answers, and publishing the results, Baumhart undoubtedly elevated ethics to a more salient position of concern in American business.

Industry Codes of Ethics and Self-Regulation. A code of ethics defining proper behavior of member firms of an industry is a form of self-regulation. Rather than wait for some government body to impose standards of conduct, industry members might take proactive steps to proscribe improper actions and define acceptable practices. Some industry codes were in existence as early as 1920 (Heermance 1924), and one of the results of the ill-fated National Industrial Recovery Act (NIRA) of 1933 was the creation of more than 700 codes covering approximately 98 per cent of American industry (Krum and Greenhill 1972). These codes, intended to control pricing and production practices so as to maintain fair competition within the industry, were typically devised and administered by industry trade associations, requiring only the approval of the President for authorization. Within three years, however, the NIRA was declared unconstitutional on the basis that this code-making process involved an illegal delegation of Congressional legislative powers, and the codes were dissolved. Thirty years later FTC Commissioner Elman would make a similar argument in opposition to the code of ethics of the Magazine Publishers Association, as noted previously in this paper.

Considerable interest re-emerged during the 1960s regarding industry codes and self-regulation. This interest was conveyed in numerous articles written by attorneys, academics, and regulators, a sample of which is reported here. Van Cise, in an award-winning article in the *Harvard Business Review*, focused on whether it is government or business who is best able to deal with unfair practices and trade abuses (Van Cise 1966). Government bodies are hindered in this task in three ways: (1) by the lack of consensus about what is fair and unfair and the substantial time needed to insure due process in the proceedings to sort out this fairness-unfairness issue; (2) by their lack of funds causing severe limitations on the number of practices that can be investigated and the depth of those investigations; and (3) by their lack of know-how because of turnover in government personnel coupled with the rapid changes in business from new products, new industries, and complex commercial relationships such as vertical integration. On the other hand, business cannot agree either on what trade practices are fair and unfair, and business firms are prevented from joining with competitors to deal with even the agreed-upon unfair practices because of the antitrust implications stemming from such cooperative action. To emphasize the latter point, Van Cise stated:

> The state of the law is such today that a government attorney who discovers a code of ethics as part of the operating papers of a trade association frequently believes that this alone justifies an antitrust investigation, and expects confidently that it will lead to the discovery of criminal antitrust violations (Van Cise 1966, p. 58).

Levin, in a lengthy and detailed law review article, discussed the antitrust implications of self-regulation. Based on a review of court cases to date, he stipulated four conditions of socially acceptable self-regulation (Levin 1967). These included (1) clear behavior standards widely accepted in the community; (2) safeguards against self-serving policies and procedures; (3) the need for joint action to forestall deterioration of products or services provided; and (4) the nonavailability of less restrictive remedies. Meeting these four conditions, in Levin's opinion, would be difficult since the industry members might differ in their goals and economic positions with any resulting code favoring dominant members and impairing competition.

The following year, Bodner presented a review of antitrust issues inherent in the operations of trade associations in general (Bodner 1968). His point was that if the exclusion of an individual or company from membership in an association produces a competitive disadvantage to that nonmember, an antitrust violation is likely. Thus, the greater the business advantage of membership in a trade association, the less limiting the association may be in defining membership requirements.

The same reasoning also applies to expulsion of a member from the association. While ethics codes were not mentioned directly in his article, Bodner's discussion intimated that requiring members to conform to an industry ethics code and expelling members who are accused of breaking the code might produce competitive disadvantage for those members and thus be illegal.

Perhaps one of the most specific discussions of the antitrust implications of industry self-regulation came from Hummel (1968), who delineated four particular kinds of restraints that might emanate from industry code agreements. These included (1) restraint of price competition (for example, prohibiting price advertising by association members); (2) hindering market access (for example, encouraging boycotts of association nonmembers); (3) impeding product improvement and innovation (for example, setting product or service standards that preclude new technologies); and (4) denial of reasonable product alternatives to consumers (for example, setting product or service standards that limit the variety of alternatives in product sizes, warranty terms, or service arrangements). Thus, if all firms in an industry association agreed to offer an identical and generous product warranty, does this constitute restraint of competition under the antitrust laws? Such questions were most cogent for those considering the development of industry codes of ethics as the decade of the 1960s ended.

The debate about self-regulation also prompted some suggested courses of action. For instance, Van Cise (1966) proposed three alternatives, each of which involved some degree of joint action by government and business. First, an industry group could propose and refine a statute that Congress would find acceptable and adopt into law. Second, an industry group might draft a guide or set of rules addressing (and condemning) the alleged unethical practices, submit this document to the FTC for consideration, hearings, and ultimately to be formulated as an industry guide. The industry guide is an interpretive statement by the FTC to instruct industry members on what they must do to avoid violating the law (Wagner 1971). Third, the industry might propose a voluntary program of self-regulation, submit it to the FTC, and apply for an advisory opinion. Advisory opinions are statements of the legality of the intended business behavior described, and will be offered by the FTC if the issue involved is not already under investigation and does not require extensive investigation. It was an FTC advisory opinion that endorsed the Magazine Publishers Association ethics code in 1967, as noted earlier in this case. While advisory opinions do not have the status of law and can be rescinded, Hoffman (1968) noted that the FTC would not proceed against an industry for conduct based upon a rescinded opinion without first granting the industry an opportunity to abandon the conduct in question.

As the decade of the 1960s drew to a close, an awareness of ethics and concern about methods of dealing with ethical problems became more pervasive throughout business organizations. As with most challenges to their business pursuits, executives began thinking in earnest about how to respond in a manner consistent with their business objectives and mission. Ethics codes and self-regulation were not completely new ideas to the direct selling industry, as the next section shows. But the shaping of such policies to adequately fit the social and political environment of the 1970s, if done at all, would require extreme care and attention to intricate legal and regulatory stipulations to avoid devising a cure more damaging than the condition it was to treat.

The Direct Selling Industry

The direct selling industry and various individual companies were the focus of many significant events prior to 1970. These included some specific regulatory activities, the development of a consumer relations code by the NADSC, and research studies of the market for direct sellers as well as examinations of sales force and company practices. Each of these is discussed in the following sections, after which is a summary look at the status of the industry and its trade association as 1970 approached.

Regulatory Activities. The FTC actions against Holland Furnace and Household Sewing Machine have already been noted. Other direct sellers, such as encyclopedia firms, also gained the FTC's attention. In 1947 the regulatory agency issued a cease-and-desist order against Americana Corporation to prohibit its salespeople from telling customers they had been specially selected to receive what were fictitious price reductions. The deceptive practices persisted, however, causing the FTC to take its case to a federal court in 1960 where Americana was found guilty (Smith 1962). Similar situations prompted the FTC to issue a complaint against Encyclopaedia Britannica and Basic Books, Incorporated (Universal World Reference Encyclopedia) in 1959 and Crowell-Collier (Collier's Encyclopedia) in 1960. Earlier the FTC issued a cease-and-desist order against Century Metalcraft Corporation, a house-to-house seller of kitchen utensils being touted as silver rather than aluminum and thereby possessing greater durability and providing improved health to the user. The 1939 order noted that the company's claims were grossly exaggerated, false, and misleading because the utensils were made primarily of aluminum and were not any more durable or health-giving than the products of their competitors (Lifshey 1948).

Prior to any of these regulatory actions, however, the FTC demonstrated its interest in the behavior of direct selling companies by holding a trade practice conference on house-to-house sales activity in 1929. Such conferences were held when the FTC wished to address industry-wide issues rather than deal with each company individually. Thus, a conference of FTC and direct selling industry representatives was held in Dayton, Ohio in October 1929, from which emanated a series of resolutions or trade practice rules. Three examples of rules promulgated by the FTC were as follows (quoted in Lifshey 1948, p. 15):

> The making or causing or permitting to be made or published any false, untrue, or deceptive statement by way of advertisement or otherwise concerning the grade, size, or preparation of any product of the industry having the tendency and capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.
>
> All unfair methods of competition and particularly those that refer to direct selling

> and the carrying out of which may bring discredit upon this industry and tend to harmfully affect or reduce the confidence of consumers in this method of sale and distribution are condemned by the industry.
>
> All members of this industry shall protect the consumer not only as far as is required by law, but as required by good morals and the best ethics of business.

These rather general statements did not have the force of law, but were meant to demonstrate that the FTC was attentive to the possibility of deceptive practices in the subject industry. This point was reinforced when the same statement of trade practice rules was repromulgated by the FTC in April 1932, though no subsequent action occurred beyond that date. This FTC procedure of providing guidelines continues today, with the resulting statements being designated as industry guides (Wagner 1971).

Consumer Relations Code. Long before the 1970 Code of Ethics was even a consideration, and even before much of the FTC scrutiny of direct selling firms and the consumerism-driven turbulence about marketplace practices, the NADSC member companies met in Chicago at their annual convention in December 1940 and unanimously approved and adopted a Consumer Relations Code. The purpose of this Code, as stated in the publication itself, was

> to give concrete and unified voice to the high standards already maintained by the members of the National Association of Direct Selling Companies. The Code states in specific terms the principles of ethical business practice conducive to a high level of responsibility to the Consumer, and pledges the sponsoring companies to adhere to these principles (*Consumer Relations Code* 1940).

This Code appears in Appendix A. It was a voluntary code to which any NADSC member could subscribe. Those members choosing to sponsor the code signed a formal agreement of participation and were then allowed to use the code emblem and other promotional materials available to associate themselves with the code. Provisions existed to penalize code violators (see item 23 of the Code in Appendix A), though in fact a NADSC member intent upon some practice that would violate the code could simply choose not to subscribe. Whether this code made a significant impact on the industry or even on the member companies of the association is open to question, since major articles written about direct selling during this time period made no mention of the code, either directly or indirectly, in discussing industry problems of deceptive practices and misrepresentation (e.g., see Lifshey 1948; Buell 1954; Brittenham et al. 1969).

In addition to the Consumer Relations Code, each NADSC member pledged to support a

"Declaration of Principles" containing the following three provisions (Deilke 1967):

> 1. Salespersons, by creating demands for goods, help provide the American people with employment and the world's highest standard of living and those who devote their lives to selling are making important contributions to the welfare of our nation.
>
> 2. Salespersons in all fields must observe the highest standards of integrity, frankness and responsibility in dealing with consumers and in all selling:
> (a) Descriptions of products must be truthful, and terms of sale clearly stated;
> (b) Honesty is required in the approach to a sale; and
> (c) Courtesy to a prospective customer, and consideration of his needs, are prime essentials of all selling.
>
> 3. The National Association of Direct Selling Companies endorses and commends the efforts of all national, state and local organizations such as the National Better Business Bureau, the United States Chamber of Commerce, and local Better Business Bureaus, Chambers of Commerce, and Commercial Clubs to establish and maintain high standards of truth and fair practices in the sale of all merchandise.

This declaration was not as specific or detailed as the Consumer Relations Code, but was an acknowledgement of the importance of ethical issues and standards of behavior.

Products and Markets. The products sold and markets served by direct selling firms have always been very diverse. In that sense, direct selling is not a typical "industry" because many of its member companies do not compete with each other on the same product lines or for the same customer needs. A comprehensive article on door-to-door selling appearing in the *Harvard Business Review* in 1954 summarized this breadth of product offerings as follows (Buell 1954):

> The variety of products sold door-to-door is impressive. One has only to take a look at the products sold by companies with membership in the National Association of Direct Selling Companies to get an idea of their multiplicity:
>
> Included are chemicals, foods, dietary supplements, hygienic products, medicinal articles, toilet articles, cosmetics, children's wear, dresses, foundation garments,

> hosiery, jackets, knitwear, lingerie, neckties, raincoats, sanitary garments, shirts, shoes, sportswear, men's and women's suits and coats, uniforms, work garments, nursery stock (shrubs, plants, etc.), paints, books, greeting cards, cooking utensils, blankets, brushes, china, fire extinguishers, household furnishings, portraits and frames, roofing and siding, seeds, and vacuum cleaners.

For most of these products, the major competition faced by direct sellers was in-store sellers or retailers. Direct selling organizations were each other's direct competitors in another way, however. They all required large sales forces, and competed in the labor market to attract salespeople. Thus, not only were these organizations selling products to consumers, they were also selling income opportunities to market their products as independent contractors. The latter was a considerable challenge, as noted further in the next section.

What was the attitude in the marketplace toward direct selling as the 1960s drew to a close? A representative picture of these attitudes can be drawn from a major consumer survey research study was completed in 1968 in and around the area of Baltimore (Jolson 1970). Respondents were drawn from 200 households in areas designated by Baltimore direct selling firms as frequently solicited by their salespeople. Personal interviews were completed with 225 respondents, and a selection of the results appears in Table 4.

A concise summary of these findings is as follows:

> Slightly more disagreed (51.6%) than agreed (42.5%) that most direct selling programs are ethical and devoid of misrepresentations.
>
> Substantially more agreed (72.9%) than disagreed (27.1%) that direct selling firms would object strenuously to misrepresentation by their salesmen.
>
> Respondents generally disagreed (73.8%) that they found much convenience and comfort in buying in their own home.
>
> Slightly more agreed (53.8%) than disagreed (46.2%) that unsolicited calls or visits by salesmen are an invasion of privacy and should be illegal.
>
> The vast majority (85.8%) would not consider employment in a position as a direct salesperson.

Thus, the job of direct salesperson and buying at home from door-to-door salespeople were viewed with disfavor, while their ethical practices garnered only a slight negative view on balance, and cases of ethical breach were not typically blamed on the direct selling companies themselves but presumably attributed to the individual salesmen. It should be noted that these survey respondents reported slightly more than two purchases on average from direct-to-home salesmen, so they had personal experiences upon which to base their answers.

Company Practices. As already noted, marketplace success for any direct selling firm is based primarily on the effort of its legion of independent contractors, many of whom are part-time in their work effort. As discussed by both Buell (1954) and Jolson (1970), these firms generally have no sophisticated hiring process, but place continued efforts on recruiting. Turnover in the sales ranks is especially high, noted by Buell as up to 300% per year. Compensation is straight commission or more typically the margin between the cost of purchase and price charged the customer. Formal training programs, apart from company-supplied manuals and motivational newsletters, is often absent. Many who join a firm's ranks of independent contractors also have another job, or are between jobs, or have ventured into direct selling just to augment their income for a specific purpose (e.g., money for vacation, Christmas gifts) and will quit when their goal is reached. Of course, many discover that selling is not to their liking, they imagined the job as different from what they experienced, and their hopes or illusions did not come true.

The critical need for recruiting spawned a variety of strategies. One was the disguised (or "curiosity") approach, in which the true nature of the job opportunity was concealed or obscured in an attempt to entice prospects who presumably would be turned off if they knew it was a direct selling job. Berton (1963) described one such scenario created by an encyclopedia firm. Advertisements for summer jobs directed at college men promised a guaranteed monthly income with no mention of selling. In the words of one student:

> I made an appointment and sat in a lecture for fifteen minutes and I still had no idea what was going on. I'd ask: "Who am I going to be working for? What am I going to be doing?" and they'd find ways of evading the question. It was like one of those movies about how spies were picked in wartime by British Army Intelligence.

Often the mystery about the job was maintained even to the end of the recruiting meeting and into the work environment itself. For instance, the encyclopedia company informed its applicants that they would be participants in a promotional campaign to "place" sets of the encyclopedia into "carefully selected homes" and would receive compensation for each set placed. The impression formed in the applicant's mind was that of becoming an advertising executive and not a salesman (Berton 1963, p. 118). Such practices of misrepresenting the nature of the job were often found in the same companies that fostered deceptive practices in consumer encounters.

A second and more legitimate recruiting strategy involved enticing the aid of active salespeople by paying them overrides or bonuses on sales of recruits they brought into the sales organization. Thus, the independent contractor could not only earn money by selling the product, but could also gain earnings by recruiting others who sold the product and who recruited still others who sold and recruited, and so on. This was the genesis of the multi-level marketing operation (MLM), which continues to be popular today but which also is subject to close regulatory scrutiny because it can be manipulated by its founders into an illegal pyramid scheme (Ella 1973). The key illegality in a pyramid operation is that those at higher levels make money in ways other than from sales to consumers. For example, a substantial fee may be required just to join the ranks of the sales organization, or a large initial investment in inventory may be required that cannot be returned for refund if the new recruit is unsuccessful, unwilling, or unable to continue in the job. More will be said about pyramid schemes in Part Three of this case study.

Industry Situation. An article in *Retailing Daily* included in Lifshey (1948) estimated the number of businesses using house-to-house selling at 6,000 in 1944. In 1954, Buell reported that the number of companies using door-to-door methods was between 3,000 and 3,500. A 1971 estimate was also put at 3,000 ("The Awesome Potential of In-Home Selling ..." 1971). These estimates are certainly approximate at best since the exact definition of a door-to-door company was not clear. For instance, did it include a regular retailer that sent a representative to a customer's home to install an appliance or deal with some other problem? Did it include manufacturers who sold to other organizations who, in turn, sold door-to-door?

Regardless of the correct number, it is clear that the vast majority did not belong to the NADSC. Lifshey reported that the number of member firms in the NADSC in 1947 was 138. Brittenham et al.(1969, p. 937) stated that "It is composed of approximately one hundred fifty of the leading direct selling companies in America," quoting Lloyd Deilke's testimony at the FTC hearings in December 1968. The 1970 membership roster of the Direct Selling Association listed 104 active members, though that number was somewhat inflated because several members were listed more than once under different names with different types of busines operations. The size of the DSA membership has grown somewhat since that time, and Appendix B provides a listing of association membership for selected time periods since 1970.

The process for becoming a member of NADSC was spelled out in a bulletin from the association president (Deilke 1967). It is as follows:

> At the time a prospective new member applies for membership in the NADSC a check-up letter is promptly sent to the following:
>
> 1. The National Better Business Bureau.
> 2. The Association of Better Business Bureaus.
> 3. The State Better Business Bureau where the applicant has its main office.
> 4. The State Chamber, as above.

5. The Chamber of Commerce in the city where the applicant is located.
6. Other Industry contacts who would be likely to know of the company.

The above referred to check-up letter reports the name, address, and contact man for the new member applicant and asks for any information, on a strictly confidential basis, relating to the question as to whether or not the application should be accepted by the NADSC. When the check-up letters are in, they are reviewed by a Membership Qualifications Committee and a decision is made.

A plausible cause why so few direct selling companies became industry members is that their application might prompt bad reports in these check-up letters. Another deterrent to membership might have been the dues, which varied in proportion to the company's sales volume. Small local or regional firms might not wish to join because they perceived no benefit from doing so. In any case, the screening process clearly produced a high standard of membership and signified a history of good behavior for those admitted.

Finally, reports indicated that at least some industry members were experiencing substantial financial success during this period. Tupperware, for example, increased its sales five-fold between 1958 and 1965 and was making a significant profit contribution to Rexall, its parent company at that time ("Rexall Calling..." 1968). Companies such as Avon, Electrolux and Fuller Brush (subsidiaries of Consolidated Foods), Dart Industries (parent of Tupperware and Vanda Beauty Counselor), Fashion Two Twenty, Health-Mor, Beeline Fashions, and Stanley Home Products were being suggested as investment opportunities ("Ringing Up Sales" 1970). All of the latter were DSA members in 1970.

This completes a look at the circumstances and challenges facing member firms of the direct selling industry as they moved closer to 1970. The influence of consumerism, the impact of past and potential regulatory activity and legislation, the rising concern for ethics, the exploratory interest in industry self-regulatory codes, and the notoriety achieved by direct selling because of the past practices of a number of firms and salespeople all form a patchwork of allegations, omens, and apprehensions that would compel the industry to act.

PART TWO

ESTABLISHING THE CODE

Three major changes occurred in the late 1960s that, taken in tandem, spurred the quest for an ethics code by this association of direct selling companies. The association hired a new president, its headquarters were moved to a new geographic location, and a variety of policies were altered including a change in the association's name.[1]

New Directions

Perhaps the fundamental impetus to the development of a code of ethics emerged from the hiring of J. Robert Brouse as president of the association in December 1968. Brouse came to the association (then still titled NADSC) with an impressive background and experience in association and consumer relations matters. Educated in journalism, he was described as a "tough-minded and experienced association executive with a Washington track record who saw the job as a unique challenge" (Lad 1991). Besides his several stints as an association executive, his background also included membership in the United States Chamber of Commerce Consumer Issues Committee, the American Society of Association Executives Government Relations Committee, the American Retail Federation Consumer Relations Committee, the Administrative Committee of the National Association of Manufacturers National Industrial Council, the Task Force on Crime in Retailing set up to advise the Senate Committee on Small Business, and the National Press Club.

Soon after coming on board, Brouse engineered the move of NADSC headquarters from Winona, Minnesota, to Washington D.C. He viewed this move as a signal to those both inside and outside the association that NADSC was a first class organization seeking proximity to "where the action was" in Washington so that improved industry-government relations could be more effectively pursued. Its Winona operations had a four-person staff geared primarily to lobbying against local and state regulations prohibiting or restricting door-to-door sales. That staff had little or no understanding of the workings of the federal government nor was it regarded by many of its member firms as an effective rallying point for their involvement and action. In fact, the record of NADSC on public relations was described as "leaves something to be desired" by a reporter who

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[1]The sources of information supporting this narrative in Parts Two, Three, and Four include personal interviews with key persons as listed in a separate section in the References, along with a review of documents such as minutes of DSA Board of Directors and Executive Committee meetings, internal memos of the association and member companies, newsletters, and other miscellaneous written materials all generally unavailable for public reference. Thus, citations to these sources are not given in the text. Three available sources were also helpful in documenting many of the events described, and these are O'Neill (1972), Offen (1976), and Lad (1991). Individual citations to these sources are also suppressed in the text of Parts Two, Three, and Four, however, except to document direct quotes.

made three attempts to gain an interview for a trade publication but was never invited or even acknowledged (Lifshey 1948). Thus, the move served to renew, energize, and unify the association to take on a task as momentous as creating a code of ethics. This move signified a new era in which the association was making a serious move into the "big leagues" of Washington to gain visibility, legitimacy, and even clout in the political arena.

To fill out this transition picture, Brouse guided a series of policy changes to accentuate and substantiate his intentions and mission. The most evident was the change in association name from the National Association of Direct Selling Companies (NADSC) to the more concise Direct Selling Association (DSA), ratified by the association members at their annual meeting in mid-1969. To reinforce the name change and the move as signalling a revitalized spirit in this association was the creation of a new logo. The logo incorporated a door-knocker symbol, and was the winning design in a competition among a number of advertising agencies of DSA member firms. Because funds were lacking, Brouse enticed these agencies to donate their ideas for a new logo, and the winning entry (from Avon's agency) was chosen by vote at a DSA Board meeting in 1969.

Other administrative policies were also nurtured into place. Brouse as President of DSA was a staff member, not affiliated with any DSA member firm, and therefore could not be the Board Chairman or even officially a Board member. He felt, however, that the top executives of DSA member firms should assume a more prominent and active role in association governance, so he worked to transform the composition of the Board to include more CEOs. In addition, he established the President's Council, an advisory group comprised of CEOs who did not sit on the Board.

Various standing committees were also established to garner involvement among additional top executives of association members and to give serious attention to various key issues. These included finance, government relations, long-range planning, membership, nominating, public relations, annual meeting, and international committees. Subcommittees of the Board were also created to address current problems. One was a Code of Ethics Subcommittee (which continues through 1992 as the Ethics Task Force). The Chairman of the Board in 1969 was Stephen Sheridan, Executive Vice-President of Electrolux, who would play a prominent role in the debate about the ethics code and whose term would extend through the annual meeting in 1970 when the ethics code was adopted.

Conceiving the Code of Ethics

Many of the events and pressures described in Part One of this case study provided a clear impetus to some type of action by DSA. The hiring of Brouse and the move to Washington signalled the association's intention to take on this challenge. What direction to take, and what strategy to employ were still unanswered questions in the minds of many association members, but Brouse had a plan.

His plan was an affirmative one -- to create a code of ethics with the expert help of legal counsel whose background in association law and familiarity in dealing with the FTC augured well for success. He found that person in Gerald E. Gilbert, a man he knew from previous work involving other associations, who was a seasoned attorney and newly-joined partner in the prestigious law firm of Hogan and Hartson, DSA's general counsel, in Washington. Gilbert's first client in Hogan and Hartson was DSA, a relationship that has lasted for twenty-five years.

Gilbert set out to tackle the impending challenge with a careful review of four information sources. One was the dissenting opinion of FTC Commissioner Elman to the FTC Advisory Opinion sanctioning the ethics code of the Paid-During-Service Magazine Subscription industry (see "Regulatory Activities" in Part One). Elman's statement represented the most negative views that might emanate from the FTC regarding any proposed DSA ethics code. In essence, Elman was concerned that regulatory powers and law enforcement are the province of government and do not belong in the hands of private individuals or organizations that might not behave in accordance with legal due process. The second information source included articles written about self-regulation detailing the issues and challenges it poses (see "Industry Codes of Ethics and Self-Regulation" in Part One). One article in particular, written by a former Federal Trade Commission Chairman, spelled out the process used by the Paid-During-Service Magazine Subscription industry to develop its code and gain its approval (Kintner and Harris 1968). The third source involved informal and "unofficial" discussions with FTC staff personnel, including William D. Dixon, an attorney in the Division of Advisory Opinions. These discussions were described as "an extremely helpful source of information" (O'Neill 1972). Finally, the Administrative Procedure Act, a 1946 federal law aimed at codifying fair procedures and methods for the administration of justice by government agencies, was carefully reviewed to clarify what procedural safeguards must be included in any enforcement aspects of the ethics code (Warren 1947).

Gilbert focused on crafting a code of ethics that did not violate antitrust laws and met the due process requirements. But the receptivity of DSA members to the imposition of any type of code of ethics was another matter. Brouse became the protagonist, encouraging discussion and thinking about the impact of having a code versus the consequences of not having one. These discussions centered around two themes: motivations for having a code (i.e., reasons for a code); and pros and cons as a result of the code (i.e., effects from having a code).

Motivations for a Code

While the motivations were expressed in various ways, they formed into two underlying categories. The first was to combat the threat of potentially debilitating government regulations. This was the motive driving those industry members who stated that a code of ethics was an "economic necessity" and was needed to "improve industry's relations with government" (Offen 1976). It was during this time of late 1969 that the FTC was considering "cooling-off" legislation, having just issued its first cooling-off order against Household Sewing Machine Company. Earlier that year Nader's Raiders had released their devastating critique of the FTC that called for a magnum boost of intensity in regulatory action. The Magnuson bill on door-to-door sales regulation had already been actively debated in the Senate during the previous year, making the misdeeds of targeted industry members quite conspicuous to representatives in Congress.

While this had not yet culminated in any significant government action aimed broadside at direct selling, DSA members sensed that such was imminent. The National Consumer Law Center, an organization at Boston College, proposed that any customer buying from a direct salesperson must sign and mail a card affirming that the sale was valid. Brouse tagged it the "Anti-Sales Act," and DSA members pondered whether this or some similar incursion against their industry could become law. Brouse believed that DSA must create a code statement that would not only pre-empt government resolution of consumer problems with direct sellers but would actually help consumers defrauded or abused by industry members. This reasoning tied in the second motive behind the push for the code.

Motive two can be summarized as the desire to improve the direct selling industry's image in the eyes of consumers. The writings of consumerists, the publicity from government hearings, and court cases involving some notorious practices of a few direct sales firms all presented a rather one-sided and negative picture of direct selling (and selling in general) as a business activity. The mere mention of direct selling or selling of any kind conjured up images of disrepute, deviousness, and dishonor in the late 1960s (Ditz 1967). DSA members themselves lamented about this situation, stating "How should an industry that has a large fringe element of disreputable fly-by-night operators go about taking effective action to counter the negative image the fringe group brings to it" (Offen 1976)?

This negative image also helped local merchants in many communities to press successfully for banning or severely limiting direct selling activities in their areas and thus to protect them from outside competition. One industry spokesperson reminisced about his experiences in the late 1950s as a member of Tupperware's public relations department, when he was often called on to represent the entire direct selling industry and its association at city council hearings:

> Direct selling, thanks to a group of companies I called the "fraudulent fringe" composed of disreputable fly-by-night outfits, had worked its way into the "top ten" of industries on the Council of Better Business Bureaus' worst offenders list. Faced with municipal councils composed mainly of local business persons armed with the BBB data, I usually had an interesting communication challenge (Bartlett 1994, p. xiii).

Some in DSA felt that simply countering a negative image was not enough, but that the action taken by this association had to send a strong signal that direct selling firms were changing completely